

Exhibit 216

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Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Master File No. 1:17-cv-00916-RA-BCM

5 - - - - -x

6 In re:

Global Brokerage, INC.

7 F/K/A FXCM, INC.

Securities Litigation

8 - - - - -x

9 Virtual Zoom Deposition

10
11 December 9, 2020

12 10:02 a.m.

13 CONFIDENTIAL VIDEOTAPED VIRTUAL
14 DEPOSITION of JOSHUA ROSENFELD, in the
15 above-entitled action, held at the above
16 time and place, taken before Jeremy
17 Richman, a Shorthand Reporter and Notary
18 Public of the State of New York, pursuant
19 to the Federal Rules of Civil Procedure,
20 and stipulations between Counsel.

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22 * * *
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<p style="text-align: right;">Page 130</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 did.</p> <p>3 Q. Do you know what transactions</p> <p>4 those bills and invoices would be</p> <p>5 referring to?</p> <p>6 A. All for order flow.</p> <p>7 Q. Were there any bills of --</p> <p>8 A. Those are the --</p> <p>9 Q. Sorry, go ahead.</p> <p>10 A. Yeah, for order flow.</p> <p>11 Q. So were there any bills or</p> <p>12 invoices sent from FXCM Holdings during</p> <p>13 the 2010 to 2014 time period other than</p> <p>14 to EFFEX for order flow?</p> <p>15 A. If there were any others,</p> <p>16 there could have been, but I don't</p> <p>17 recall any at this time. If there was</p> <p>18 anything, then it would be a one-up</p> <p>19 item, you know, one-time -- it was</p> <p>20 nothing with any regularity, definitely</p> <p>21 not.</p> <p>22 Q. Are you familiar with the</p> <p>23 sources of revenue generated by FXCM</p> <p>24 Holdings during the 2010 to 2014 time</p> <p>25 frame?</p>	<p style="text-align: right;">Page 132</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 from the banks. But no -- I think</p> <p>3 that's it, though. Okay.</p> <p>4 Q. Looking at the same email we</p> <p>5 were talking about before, middle of</p> <p>6 page 2, 11:19 a.m. from yourself to</p> <p>7 Patricia Muchinsky. We talked about</p> <p>8 this a little bit before, but I just</p> <p>9 want to confirm. So the chart in this</p> <p>10 email, what does volume represent?</p> <p>11 A. Volume represents the</p> <p>12 millions traded within, you know, it</p> <p>13 doesn't represent income, it represents</p> <p>14 volume. So if you had an instance</p> <p>15 where, I don't know, they traded a</p> <p>16 hundred million dollars' worth of</p> <p>17 positions with us, and they lost money</p> <p>18 on it, we would still charge the same</p> <p>19 amount as if they made a hundred</p> <p>20 million dollars off of us. So the</p> <p>21 income was irrelevant; the volume is</p> <p>22 what they paid on.</p> <p>23 Q. And fee per million, what</p> <p>24 does that mean here?</p> <p>25 A. This is what we discussed</p>
<p style="text-align: right;">Page 131</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 A. No, I'm not. This was one of</p> <p>3 them. I don't know what the other</p> <p>4 sources of revenue were. I assume you</p> <p>5 mean direct revenue by the company as</p> <p>6 opposed to, you know, the U.S. is a</p> <p>7 subsidiary of Holdings, so naturally</p> <p>8 the income of U.S. flows upwards. But</p> <p>9 if you're talking about independent</p> <p>10 income, Baruch Greenbaum was the one</p> <p>11 who handled the books of Holdings, and</p> <p>12 I wasn't.</p> <p>13 Q. Okay. And that was going to</p> <p>14 be my next question. So is it safe to</p> <p>15 say you don't recall specifically any</p> <p>16 other forms of direct income to FXCM</p> <p>17 Holdings in the 2010 to 2014 time frame</p> <p>18 other than these order flow payments</p> <p>19 from EFFEX?</p> <p>20 A. Yes, yeah. It doesn't mean</p> <p>21 there wasn't, but at this point I don't</p> <p>22 recall anything else.</p> <p>23 Q. Understood.</p> <p>24 A. Obviously, it's very likely</p> <p>25 there was something interesting coming</p>	<p style="text-align: right;">Page 133</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 earlier, the amount per million that</p> <p>3 they paid for that volume.</p> <p>4 Q. Okay. And you touched on</p> <p>5 this earlier, but under the column that</p> <p>6 says P&L, what does that represent?</p> <p>7 A. That actually, oh, so again,</p> <p>8 for an invoice, rather than saying P&L,</p> <p>9 it should probably say, charges from</p> <p>10 their perspective. We put it in their</p> <p>11 perspective, that's income. But that's</p> <p>12 the amount that they paid for order</p> <p>13 flow.</p> <p>14 Q. And was that related in any</p> <p>15 direct way to EFFEX's P&L on that order</p> <p>16 flow?</p> <p>17 A. Not at all. Not at all. It</p> <p>18 was completely dependent on volume.</p> <p>19 They could have lost millions, they</p> <p>20 could have made millions, and it was</p> <p>21 all based on the volume that -- of</p> <p>22 business that we gave them, regardless</p> <p>23 of whether they made or lost money on</p> <p>24 it.</p> <p>25 Q. Do you know why that was</p>

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<p style="text-align: right;">Page 134</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 designated as P&L?</p> <p>3 A. Because we're selfish and we</p> <p>4 only think of ourselves. So to us it</p> <p>5 was P&L, so we called it P&L. But</p> <p>6 later on, when we put information in</p> <p>7 financial statements and we thought</p> <p>8 more in technical terms and called it</p> <p>9 order flow, but we were charging for</p> <p>10 order flow, we were thinking of it as</p> <p>11 P&L, and the first time someone used</p> <p>12 the term order flow it was like, What</p> <p>13 is that? You know, but for us in this</p> <p>14 instance, P&L meant their volume times</p> <p>15 their fee per million.</p> <p>16 Q. Okay, we're going to move on</p> <p>17 to the next exhibit. It should be</p> <p>18 loading now, bear with me.</p> <p>19 A. I still haven't gotten it.</p> <p>20 MR. DAHAN: Me either.</p> <p>21 MR. BAKER: It's still</p> <p>22 loading on my end, too.</p> <p>23 MR. DAHAN: Must be a long</p> <p>24 document.</p> <p>25 (Exhibit 8, marked for</p>	<p style="text-align: right;">Page 136</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 Q. Was there any loss component</p> <p>3 or anything except for direct revenue</p> <p>4 or income --</p> <p>5 A. There wasn't.</p> <p>6 Q. -- with respect to these</p> <p>7 payments?</p> <p>8 A. There was not.</p> <p>9 Q. Okay. Moving on to --</p> <p>10 A. We just use certain terms</p> <p>11 interchangeably, like what's the P&L,</p> <p>12 even if it will always be profitable.</p> <p>13 If it would be in a technical document,</p> <p>14 you probably wouldn't use that term.</p> <p>15 But they are essentially</p> <p>16 interchangeable in, you know, common</p> <p>17 lingo.</p> <p>18 Q. And is the P&L you're</p> <p>19 referring to, the invoice, different</p> <p>20 from the trading P&L that we talked</p> <p>21 about earlier today?</p> <p>22 A. Yes, completely. Completely</p> <p>23 unrelated.</p> <p>24 Q. Is there a way to know when</p> <p>25 trading refers to trading P&L, versus</p>
<p style="text-align: right;">Page 135</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 identification, Bates stamped</p> <p>3 GBLR_00194774.)</p> <p>4 A. There it is, plus attachment.</p> <p>5 MR. DAHAN: See?</p> <p>6 A. Seems like there are a lot of</p> <p>7 blank pages to it.</p> <p>8 Q. Give it a minute to load.</p> <p>9 It's actually still loading on my end.</p> <p>10 Might be an Exhibit Share issue.</p> <p>11 A. Oh, an unexpected error, but</p> <p>12 I still -- okay.</p> <p>13 MR. DAHAN: Mine's loaded</p> <p>14 now.</p> <p>15 Q. While that's loading, I have</p> <p>16 a follow-up or two on the previous</p> <p>17 document. I don't think you need to</p> <p>18 look at the document, but I'm just</p> <p>19 going to ask you a few questions first,</p> <p>20 before we go into the new one.</p> <p>21 When you're talking about P&L</p> <p>22 as these order flow payments that you</p> <p>23 receive from EFFEX, P&L stands for</p> <p>24 profit and loss; is that right?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 137</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 how you're using it in the context of</p> <p>3 this invoice?</p> <p>4 A. Anyone who is familiar with</p> <p>5 the deal would have known what it</p> <p>6 meant, but to an outsider, there's no</p> <p>7 real way of seeing it.</p> <p>8 Q. Okay. So moving on to</p> <p>9 Exhibit 8, which finally loaded, please</p> <p>10 take a moment to review, and for the</p> <p>11 time being I'm going to focus your</p> <p>12 attention on specific parts here. I'm</p> <p>13 only going to ask you questions about</p> <p>14 the attachment when we get there.</p> <p>15 For the record, Exhibit 8 is</p> <p>16 Bates stamped GLBR_194774. That</p> <p>17 includes an attachment which is Bates</p> <p>18 stamped GLBR_194774.</p> <p>19 And Mr. Rosenfeld, my first</p> <p>20 question will be, is this an email from</p> <p>21 Mr. Lande to yourself and Joe Filko</p> <p>22 attaching a document services</p> <p>23 agreement?</p> <p>24 A. Yes.</p> <p>25 Q. And the name of the</p>

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<p style="text-align: right;">Page 166</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 seven, and he's saying let's cut it in</p> <p>3 half. This is like going to a flea</p> <p>4 market and the person gives you a</p> <p>5 price. You give a completely different</p> <p>6 price, and then you start haggling.</p> <p>7 Q. Okay. And whatever rate that</p> <p>8 Mr. Dittami and Mr. Ahdout eventually</p> <p>9 settled on, would that be reflected in</p> <p>10 invoices sent from FXCM to EFFEX for</p> <p>11 that month?</p> <p>12 A. Yeah, it should be. Yeah.</p> <p>13 Anything we billed was in writing, and</p> <p>14 it would have to be in writing, and if</p> <p>15 there was any change in rate -- any</p> <p>16 retroactive rate, it would be in</p> <p>17 writing as well, or any -- if it was</p> <p>18 just a change as of a certain period of</p> <p>19 time, like if we were done with</p> <p>20 September and October was 17.50, then</p> <p>21 we would just send the October bill,</p> <p>22 17.50.</p> <p>23 When we sent the bill, the</p> <p>24 amount was already predetermined.</p> <p>25 We're not sending a bill, and then you</p>	<p style="text-align: right;">Page 168</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 is that correct?</p> <p>3 A. Yeah, correct.</p> <p>4 Q. I'm going to introduce the</p> <p>5 next exhibit. Still loading on my end,</p> <p>6 so give it a minute.</p> <p>7 (Exhibit 11, marked for</p> <p>8 identification, Bates stamped</p> <p>9 GLBR_00184106.)</p> <p>10 Q. Exhibit 11 should be up now.</p> <p>11 Let me know when you see it, and this</p> <p>12 probably won't take very long to</p> <p>13 review.</p> <p>14 MR. DAHAN: That took a long</p> <p>15 time to load for that.</p> <p>16 MR. BAKER: I know.</p> <p>17 A. Okay.</p> <p>18 Q. For the record, Exhibit 11 is</p> <p>19 Bates stamped GLBR_184106. Mr.</p> <p>20 Rosenfeld, is this an email from</p> <p>21 yourself to Mr. Dittami, copying</p> <p>22 Mr. Filko and Mr. Greenbaum?</p> <p>23 A. Yeah. Yes, it is.</p> <p>24 Q. And in your email, you say</p> <p>25 you have figures for October. What</p>
<p style="text-align: right;">Page 167</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 close us out, you're trying to rip us</p> <p>3 off, we'll change the amount. None of</p> <p>4 that. He would let us know in advance,</p> <p>5 and if there was a change, it would</p> <p>6 appear in the invoice we actually sent.</p> <p>7 Q. When you say, He would let us</p> <p>8 know in advance --</p> <p>9 A. John Dittami. And by us,</p> <p>10 either he would speak directly to</p> <p>11 William, or for some reason he would</p> <p>12 call me, Oh, I've got to charge a lower</p> <p>13 price, you know, I'll have to let you</p> <p>14 know, and sort of planting the seeds</p> <p>15 that, understanding that I would go to</p> <p>16 William with that to get him used to</p> <p>17 the idea that the price has to come</p> <p>18 down.</p> <p>19 Q. Okay. So it was your</p> <p>20 understanding that between Mr. Dittami</p> <p>21 and Mr. Ahdout, they would negotiate a</p> <p>22 rate per million that would be applied</p> <p>23 to the order flow captured by EFFEX for</p> <p>24 the month, and then that rate would be</p> <p>25 reflected in an invoice sent to EFFEX;</p>	<p style="text-align: right;">Page 169</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 figures are you referring to here?</p> <p>3 A. My email says EES income, but</p> <p>4 I don't know. It doesn't logically</p> <p>5 make sense that this is EES income if</p> <p>6 we're at a point where John is already</p> <p>7 not in the company. So I am not sure.</p> <p>8 Q. Did you sometimes use EES to</p> <p>9 refer to EFFEX?</p> <p>10 MR. DAHAN: Objection to</p> <p>11 form.</p> <p>12 A. I don't remember. Maybe</p> <p>13 since he worked on EES, it's possible.</p> <p>14 But the two weren't related to each</p> <p>15 other, so it's doubtful. It could have</p> <p>16 been a slip where you say one thing,</p> <p>17 you mean something else, you know, it's</p> <p>18 like calling one of your kids by</p> <p>19 another kid's name, that kind of thing.</p> <p>20 Q. Was there a certain type of</p> <p>21 figure that you would typically request</p> <p>22 from Mr. Dittami on a monthly basis?</p> <p>23 A. Typically on a monthly basis,</p> <p>24 we did get his volume numbers. For</p> <p>25 EFFEX we compare them to our volume</p>

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<p style="text-align: right;">Page 170</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 numbers. And, you know, we would make</p> <p>3 a determination as to how much he</p> <p>4 should be paid, whether the volume made</p> <p>5 sense. That's really the only thing</p> <p>6 that we would get from him on a monthly</p> <p>7 basis, that I remember.</p> <p>8 Q. And would those volume</p> <p>9 numbers -- you said his, meaning</p> <p>10 Mr. Dittami's volume numbers, and then</p> <p>11 FXCM's volume numbers. So is it</p> <p>12 accurate to say that on a monthly</p> <p>13 basis, you would attempt to reconcile</p> <p>14 EFFEX's volume, records of the trading</p> <p>15 volume that EFFEX had with the same</p> <p>16 records that FX had?</p> <p>17 A. Correct, although I wasn't</p> <p>18 the one who would do that. Accounting</p> <p>19 did not have the capability of doing</p> <p>20 that, because -- we're able to see</p> <p>21 things by books. So let's say an EES</p> <p>22 book, we would be able to see what</p> <p>23 happened by running the book in our</p> <p>24 back office and knowing what the volume</p> <p>25 is. But for EFFEX, we didn't have that</p>	<p style="text-align: right;">Page 172</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 it would be used in accounting for</p> <p>3 anything else.</p> <p>4 Q. Do you remember ever asking</p> <p>5 -- sorry -- strike that.</p> <p>6 Did you ever ask EFFEX for</p> <p>7 their income for a given month?</p> <p>8 A. No.</p> <p>9 Q. Did you ever receive</p> <p>10 information on EFFEX's monthly income?</p> <p>11 A. Not that I remember. I mean,</p> <p>12 John could have given us income numbers</p> <p>13 enough to say, Oh, look, I'm not making</p> <p>14 anything, you've got to lower your</p> <p>15 price. But it's not anything I would</p> <p>16 have retained or looked at, I would</p> <p>17 just look at it as posturing. There is</p> <p>18 no practical reason for us to -- no</p> <p>19 practical use for his numbers, even if</p> <p>20 we did get them.</p> <p>21 Q. Okay. Introducing another</p> <p>22 exhibit, this is Exhibit 12. Please</p> <p>23 let me know when you can see it.</p> <p>24 (Exhibit 12, marked for</p> <p>25 identification, Bates stamped</p>
<p style="text-align: right;">Page 171</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 capability because it's, you know, all</p> <p>3 income, regardless of liquidity</p> <p>4 provider, is mixed together. The books</p> <p>5 match where the customers are rather</p> <p>6 than where the liquidity provider is.</p> <p>7 So we had someone else -- we had</p> <p>8 someone in accounting with a</p> <p>9 programming background who would dig</p> <p>10 deep and come up with the volume.</p> <p>11 Q. Okay. And you would</p> <p>12 reconcile EFFEX's volume figures for</p> <p>13 the month with FXCM's volume figures</p> <p>14 for the month, and as a result of the</p> <p>15 reconciliation process, that's the</p> <p>16 volume number that would go into the</p> <p>17 invoices sent to EFFEX; is that</p> <p>18 correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. Do you know if EFFEX's</p> <p>21 volume numbers were used for any other</p> <p>22 purpose at FXCM?</p> <p>23 A. No, not within accounting.</p> <p>24 So I don't know if we'd see it</p> <p>25 somewhere else, but I can't see where</p>	<p style="text-align: right;">Page 173</p> <p>1 CONFIDENTIAL - ROSENFELD</p> <p>2 GLBR_00184107.)</p> <p>3 A. I can see it.</p> <p>4 Q. Okay. And please take a</p> <p>5 minute to review. For the record,</p> <p>6 Exhibit 12 is Bates stamped GLBR_184107</p> <p>7 and an attachment, which is Bates</p> <p>8 stamped GLBR_184108. And Mr.</p> <p>9 Rosenfeld, my first question to you</p> <p>10 will be if this is an email from</p> <p>11 yourself to Mr. Dittami, copying a few</p> <p>12 other individuals and attaching a</p> <p>13 document entitled EFFEX_invoice NOV2010</p> <p>14 for OCT2010?</p> <p>15 A. Yeah.</p> <p>16 Q. And you see in Mr. Dittami's</p> <p>17 email, the lower one on the first page,</p> <p>18 he writes, Please provide me with</p> <p>19 updated invoice for services from First</p> <p>20 Derivatives and payment due to holding.</p> <p>21 And your email, you write, Kristel,</p> <p>22 please send John the invoice for what</p> <p>23 is due to the U.S.</p> <p>24 Who is Kristel?</p> <p>25 A. She's the accounts payable</p>